STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 23, 2005
v	No. 255069 Wayne Circuit Court
RAYMOND NORMAN RUDDER, Defendant-Appellant.	LC No. 02-015154-01

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317, and sentenced to life imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises from the November 9, 1970, slaying of Patricia Blake in her Detroit apartment. Defendant was convicted in 2004, principally on the basis of fingerprint evidence found on the alleged murder weapon – a decorative whiskey bottle that had been displayed in Blake's apartment.

I. Jury Instructions

On appeal, defendant first challenges several of the trial court's decisions regarding jury instructions. Questions involving the applicability of jury instructions are reviewed de novo. *People v Perez*, 469 Mich 415, 418; 670 NW2d 655 (2003). This Court reviews jury instructions in their entirety to determine whether there is error requiring reversal. *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003). This Court will not reverse a conviction if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id*.

A. Second-degree Murder Instruction

Defendant argues that the trial court erred by instructing the jury on second-degree murder. Specifically, defendant claims that the instruction was not warranted because there was no dispute concerning the elements that differentiate first- and second-degree murder, and because the instruction was not supported by substantial evidence. We disagree.

Defendant was charged with first-degree murder. In *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002), our Supreme Court overruled precedent requiring that a jury always be instructed on second-degree murder in a case involving a prosecution for first-degree murder. Under *Cornell*, *supra* at 358 n 13, an instruction on second-degree murder as a necessarily included lesser offense of first-degree murder is proper "if the intent element differentiating the two offenses is disputed and the evidence would support a conviction of second-degree murder."

In this case, there was an evidentiary dispute regarding the elements differentiating first- and second-degree murder. While the jury could have inferred premeditation and deliberation from the evidence, it was not required to do so and instead could have concluded that the offense involved a spur of the moment killing that occurred before defendant had the opportunity to reflect on his actions. Significantly, the evidence indicated that the victim was killed inside her own apartment and that the alleged murder weapon was an item, a whiskey bottle, that is not normally used as a weapon. Additionally, the bottle was on display in the victim's apartment rather than having been brought there by the perpetrator. The jury could have inferred from this evidence that the perpetrator did not arrive at the victim's apartment intending to kill her, and instead that the killing occurred under circumstances not involving premeditation or deliberation. See, e.g., *People v Fletcher*, 260 Mich App 531, 558 n 11; 679 NW2d 127 (2004). Because an instruction on second-degree murder was supported by a rational view of the evidence, the trial court properly instructed the jury on that offense. *Cornell*, *supra*.

Further, because second-degree murder is a necessarily included lesser offense of first-degree murder, defendant had adequate notice that he would be required to defend against such a charge. *People v Ora Jones*, 395 Mich 379, 388; 236 NW2d 461 (1975), overruled on other grounds in *Cornell*, *supra* at 358; see also *People v Darden*, 230 Mich App 597, 600; 585 NW2d 27 (1998).

B. Lack of Presence Instruction

Next, defendant argues that the trial court erred by denying his request to instruct the jury in accordance with CJI2d 7.4 (lack of presence). We disagree.

The trial court was required to give this instruction only if it was supported by the evidence. *People v Fennell*, 260 Mich App 261, 265; 677 NW2d 66 (2004). Alibi evidence consists of testimony that shows that the defendant was somewhere other than the scene of the crime when the crime occurred. *People v Gillman*, 66 Mich App 419, 424; 239 NW2d 396 (1976). "Testimony in support of an alibi need accomplish no more than raise a reasonable doubt of defendant's presence at the time and place of the commission of the crime charged." *People v Lee*, 391 Mich 618, 641; 218 NW2d 655 (1974).

In this case, a representative of the United Auto Workers union testified that defendant became a member of that union nine days after the charged offense was committed. The witness explained that this did not mean that defendant was not working at the Ford Woodhaven Plant at an earlier date, but admitted that he had no personal knowledge whether defendant was working on the day of the offense. The totality of this testimony was insufficient to establish a possible alibi for defendant on the date of the offense. *Id.* Accordingly, the trial court did not err in denying defendant's request to instruct the jury in accordance with CJI2d 7.4. *Fennell*, *supra*.

C. Adverse Inference Instruction

Testimony indicated that the alleged murder weapon, the whiskey bottle, was initially placed in a police locker, but was subsequently lost or destroyed sometime over the years. Defendant argues that because the bottle may have yielded evidence valuable to his defense, the trial court erred by refusing to instruct the jury that it could infer that the whiskey bottle would have been adverse to the prosecution. We do not agree.

A defendant is entitled to an adverse inference instruction concerning the loss or destruction of potentially exculpatory evidence only upon a showing of bad faith. *People v Davis*, 199 Mich App 502, 514-515; 503 NW2d 457 (1993). Here, there is no suggestion that the loss or destruction of the whiskey bottle was the product of bad faith. To the contrary, the record indicates only that at some point during the thirty-three years between the murder and the filing of charges in this matter, the bottle was either misplaced or destroyed. Because there is no indication that the loss or destruction of the bottle was the product of bad faith on the part of the prosecution or police, the trial court properly declined to give the adverse inference instruction.

II. Sufficiency of the Evidence

Defendant next argues that the fingerprint evidence was insufficient to identify him as the perpetrator because the evidence failed to prove that his fingerprint could only have been left at the time of the offense. Again, we disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Fingerprint evidence alone is sufficient to establish identity if the fingerprints are found at the scene of the crime under such circumstances that they could only have been made at the time of the commission of the crime. *People v Ware*, 12 Mich App 512, 515; 163 NW2d 250 (1968); see also *People v Willis*, 60 Mich App 154, 158-159; 230 NW2d 353 (1975).

In this case, the testimony indicated that the whiskey bottle on which defendant's fingerprint was found had been cleaned after it was brought to the victim's apartment. Further, the victim's husband testified that he had never met defendant before, did not know him, and there was no reason for defendant to have ever been inside the apartment. This evidence, viewed in a light most favorable to the prosecution, was sufficient to enable the jury to find that defendant's fingerprint was left on the bottle under such circumstances that it could only have been made at the time of the commission of the crime. Thus, the fingerprint evidence was sufficient to establish defendant's identity as the perpetrator. *Jaffray*, *supra*; *Willis*, *supra*.

III. Cross-examination

Finally, defendant argues that the trial court improperly limited his cross-examination of two prosecution witnesses. We disagree.

This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *People v Taylor*, 252 Mich App 519, 521; 652 NW2d 526 (2002). An abuse

of discretion occurs when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the court's ruling. *Id*.

"Neither the Sixth Amendment's Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject." *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). To the contrary, "[c]ross-examination may be denied with respect to collateral matters bearing only on general credibility, as well as irrelevant issues." *Id*. (Citation omitted). Insofar as the Confrontation Clause is concerned, trial judges retain wide latitude to impose reasonable limits on cross-examination based on concerns about, among other things, confusion of the issues or interrogation that is repetitive or only marginally relevant. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). Moreover, the scope of cross-examination is within the discretion of the trial court. *Canter*, *supra*.

Here, finding a lack of relevance, the trial court limited defendant's inquiry into other instances of home invasions in the neighborhood in 1970. Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Because evidence of other crimes in the area in 1970 had little, if any, relevance to defendant's guilt or innocence, the trial court did not abuse its discretion in refusing to permit this line of questioning.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey